

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
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Th- 8d



RECORD PACKET COPY

Date Filed: September 11, 2002
49th Day: October 30, 2002
180th Day: March 10, 2003
Staff: SLB-SF
Staff Report: September 19, 2002
Hearing Date: October 10, 2002

STAFF REPORT: REGULAR CALENDAR

APPLICATION FILE NO.: 2-02-010

APPLICANTS: Michael Whitt, Trustee for the Clerico Trust & Nancy Tate.

PROJECT DESCRIPTION: Lot line adjustment of three lots (3.87, 1.57, and 3.45 acres) resulting in lots of 3.32, 2.26, and 3.13 acres.

PROJECT LOCATION: 12740 & 12376 Sir Francis Drake Boulevard, Inverness, Marin County
APN 114-062-06, -07 and -08

1.0 EXECUTIVE SUMMARY

The applicants propose to adjust the lot lines of three contiguous lots. The existing lots would change in size from 3.87, 1.57, and 3.45 acres to 3.32, 2.26, and 3.13 acres respectively. Commission staff recommends approval of the permit with conditions to avoid impacts related to wetlands and environmentally sensitive habitat areas.

2.0 STAFF RECOMMENDATION

The staff recommends conditional approval of Coastal Development Permit Application No. 2-02-010.

Motion: *I move that the Commission approve Coastal Development Permit Application No. 2-02-010, subject to the conditions specified below.*

Staff Recommendation of Approval

The staff recommends a YES vote. To pass the motion, a majority of the Commissioners present is required. Approval of the motion will result in the adoption of the following resolution and findings.

Resolution

The Coastal Commission hereby **grants** permit No. 2-02-010, subject to the conditions below, for the proposed development on the grounds that (1) the development is in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and (2) there are no feasible

alternatives or feasible mitigation measures other than those specified in this permit that would substantially lessen any significant adverse impact that the activity may have on the environment.

2.1 Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

2.2 Special Conditions

1. Open Space and Conservation Easement
 - A. No development, as defined in section 30106 of the Coastal Act, shall occur on the area identified on Exhibit 8 as proposed Parcel I, consisting of: (1) the land identified as Assessors Parcel Number 114-062-18 on Exhibit 6 and (2) the 0.12 acres of land to be transferred from APN 114-062-17 (Parcel E) to APN 114-062-18 (Parcel F) that is identified on Exhibit 7 (0.12-acre Lot Line Adjustment) except for:
 - a) vegetation removal for fire management, pursuant to a written order from Marin County Fire Department,
 - AND
 - b) removal of non-native vegetation pursuant to a Commission approved coastal development permit for habitat restoration.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, and consistent with the revised project description proposed by the applicant as of September 11, 2002 (Exhibit 9), the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an open space and conservation easement for the purposes of open space and habitat conservation. Such

easement shall be located over the area identified on Exhibit 8 as proposed Parcel I, consisting of: (1) the land identified as Assessors Parcel Number 114-062-18 on Exhibit 6 and (2) the 0.12 acres of land to be transferred from APN 114-062-17 (Parcel E) to APN 114-062-18 (Parcel F) that is identified on Exhibit 7 (0.12-acre Lot Line Adjustment). The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area. The recorded document shall also reflect that development in the easement area is restricted as set forth in this permit condition.

- C. The offer shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

3.0 FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

3.1 Project Location

The project site, located at 12740 and 12736 Sir Francis Drake Road, is on the southwest side of Tomales Bay in Inverness, Marin County (Exhibit 1, Regional Map & Exhibit 2, Vicinity Map). Approximately two thirds of the project site is located on dry land. As the site extends towards Tomales Bay, the dry land transitions into wet, marshy ground and the most eastern portion is subject to tidal action. The site consists of three contiguous parcels: Parcel A (APN 114-062-06), Parcel B (APN 114-062-07), and Parcel C (APN 114-062-08) (Exhibit 3, Assessors Parcel Map). Parcel A, a 3.87-acre lot, and Parcel B, a 1.57-acre lot, are located mostly on dry uplands, with the exception of the northwest corner of Parcel B. Parcel C is on mostly wet soils, however, there is a small area of dry ground in the center of the lot. Two small drainages run across Parcel C and drain into Tomales Bay. There is a pond located in the southern corner of the project site that is bisected by Parcels A and C (Exhibit 4, Site Aerial Photograph). Both Parcels A and B abut Sir Francis Drake Boulevard and are developed with single-family residences. In addition to a single-family residence, Parcel A is developed with a detached accessory structure, fencing, and associated septic system improvements. Parcel C separates Parcels A and B from Tomales Bay. Located in the center of Parcel C is a dilapidated wooden pier, which at one time was in water, however, due to sedimentation of the bay, the pier now stands only in wet soils and is overgrown with brush. Fencing also separates Parcel C from Parcels A and B. Of the three lots, Parcel C is the only parcel that does not have direct access to Sir Francis Drake Boulevard.

3.2 Project History

The project site is located partially within the Coastal Commission's original permitting jurisdiction and partially within Marin County's permitting jurisdiction (Exhibit 5, Boundary Determination). In 1999, Marin County approved a local lot line adjustment subdivision approval on the project site in which the parcels were purportedly reconfigured so that all three parcels would abut Sir Francis Drake Boulevard. At the time, the County found that: (1) each of the affected lots is a separate legal lot of record; (2) the lot line adjustment did not result in the creation of additional parcels or additional building sites; and (3) the lot line adjustment conformed with all zoning and development provisions of Titles 18, 20, 22 and 24 of Marin

County Code, including but not limited to, those which address minimum lot sizes, lot width, street frontage, and setbacks from all property lines. Because the County did not realize that the purported lot line adjustment included land within the Commission's retained jurisdiction, the County erroneously determined that the project was not subject to coastal development permit requirements pursuant to Categorical Exclusion Order E-81-6 approved by the California Coastal Commission. As a result of the purported lot line adjustment, the APNs for the reconfigured lots were changed to 114-062-16, -17, and -18, (labeled as Parcels D, E, and F respectively on Exhibit 6, 1999 Purported Lot Line Adjustment). Following the County's approval of the local lot line adjustment subdivision approval, APN 114-062-016, Parcel D, was sold to project co-applicant Nancy Tate. Parcels E and F, APNs 114-062-17 and -18, remain as part of the Clerico Trust. On February 19, 2002, the Commission received notification that the County was processing a lot line adjustment application for 0.12-acres of land to be transferred from APN 114-062-17 (Parcel E) to APN 114-062-18 (Parcel F). Commission planning staff determined that at least portions of both the purported 1999 lot line adjustment as well as the 2002 proposed lot line adjustment are within the Commission's coastal development permitting jurisdiction. On April 12, 2002, the County conditionally approved the 0.12-acre lot line adjustment via a local subdivision approval process and processed a Coastal Permit Exclusion for the portions of the development within its coastal development permit jurisdiction. The conditions of the local subdivision approval included a requirement that prior to vesting the lot line adjustment, the applicant submit a written waiver or approval of the project from the California Coastal Commission.

Subsequent to the County's lot line adjustment approval, Commission mapping staff determined that the subject 0.12 acres falls entirely within the Commission's coastal development permitting jurisdiction and that portions of the site included in the 1999 County approved lot line adjustment are within the Commission's coastal development permitting jurisdiction (Exhibit 5, Boundary Determination). Accordingly, the portions of the lot line adjustments that are located within the Commission's retained permitting jurisdiction are not subject to any permit exemption afforded by Categorical Exclusion Order E-81-6, and therefore require coastal development permits. Thus, the applicants, through this coastal development permit application, are seeking approval for: (1) the portions of the 1999 purported lot line adjustment approved by the County that are within the Commission's coastal development permitting jurisdiction (Exhibits 5, Boundary Determination & Exhibit 6, 1999 Purported Lot Line Adjustment) and (2) the proposed 2002 lot line adjustment adjusting 0.12 acres of land from APN 114-062-17 (Parcel E) to APN 114-062-18 (Parcel F) (Exhibit 7, Proposed 0.12-acre Lot Line Adjustment).

3.3 Project Description

The applicants are proposing to adjust the boundary lines for the portions of existing Parcels A, B and C that lie within the Commission's permitting jurisdiction. For purposes of illustration, the parcels would be adjusted and newly labeled as follows:

Existing parcel label	Existing parcel size	New parcel label	New parcel size
A	3.87 acres	G	3.32 acres
B	1.57 acres	H	2.26 acres
C	3.45 acres	I	3.13 acres

The adjustment would result in newly reconfigured parcels: (1) new Parcel G would be 3.32 acres; (2) new Parcel H would be 2.26 acres; and (3) new Parcel I would be 3.13 acres (Exhibit 8, Proposed Lot Lines). The lot line adjustment would also change the parcel lines so that all three parcels would abut Sir Francis Drake Boulevard (Exhibit 8, Proposed Lot Lines). The existing development on the newly reconfigured parcels i.e., Parcels G, H and I would remain on the respective parcels, with the exception of a portion of the fence and the pond that is bisected by existing Parcels A and C, which would instead be located entirely within the boundaries of newly reconfigured Parcel G.

3.4 Coastal Act Issues

3.4.1 Wetlands and Environmentally Sensitive Habitat

Coastal Act Section 30121 states:

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

Coastal Act Section 30233 states:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

2-02-010 (Whitt & Tate)

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

Coastal Act Section 30107.5 states:

Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Coastal Act Section 30240 states in relevant part:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

The project site is located between Sir Francis Drake Boulevard and Tomales Bay. As described in Section 3.1, approximately two thirds of the site is dry uplands, and the remaining portion is wet marshy soils. The proposed lot line adjustment would result in locating reconfigured Parcel I as labeled on Exhibit 8, Proposed Lot Lines (i.e., former Parcel C) entirely within the areas of wet soils on the north and northeast portions of the site which appear to be a wetland as defined by the Coastal Act. Section 30121 of the Coastal Act defines wetlands as lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens. Section 30233 of the Coastal Act allows only specified types of development in wetlands. Residential uses are not one of the uses permitted by 30233.

In addition to potential wetlands, the site may be defined as environmentally sensitive habitat. Section 30107.5 of the Coastal Act defines environmentally sensitive habitat areas (ESHA) as those in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. Section 30240 protects ESHA against any significant disruption of habitat values, and only allows uses dependent on those resources within those areas. A biological assessment was not completed for the site; however, the site is immediately adjacent to Tomales Bay and may support rare or especially valuable habitat, animals or plants. If portions of proposed Parcel I are ESHA, use of those portions of the site would be limited to that which is allowed under Section 30240.

In the absence of a wetland delineation and a biological assessment demonstrating otherwise, the Commission assumes that the entirety of proposed Parcel I may indeed constitute wetlands and/or ESHA, and is thus afforded the full protections of Sections 30233 and 30240 of the Coastal Act. Thus, it is possible that the proposed lot line adjustment would result in an all ESHA and wetland parcel that could not be developed consistent with Sections 30233 and 30240

of the Coastal Act. As such, the proposed lot line adjustment would be inconsistent with Coastal Act Sections 30233 and 30240. However, the applicants propose to record an open space and conservation easement over proposed Parcel I prohibiting all future development of the property. (See Exhibit 9, Proposed Open Space and Conservation Easement) Accordingly, it is not necessary for the Commission to finally resolve the status of any biological resources on the site. In accordance with the applicants' proposal and to ensure that any wetlands and ESHA are protected from future development, **Special Condition 1**, requires the applicants to irrevocably offer to dedicate to a Public Agency or a private association as approved by the Executive Director an open space and conservation easement over the entire proposed Parcel I.

Thus, as conditioned, the open space and conservation easement ensures that the proposed lot line adjustment would not significantly adversely impact wetlands or ESHA. Therefore the Commission finds that as conditioned, the proposed project is consistent with Section 30233 and 30240 of the Coastal Act.

3.5 Public Access

Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreation opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resources areas from overuse.

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

In its application of these policies, the Commission is limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to offset a project's adverse impact on existing or potential public access.

The project site, located at 12740 and 12736 Sir Francis Drake Boulevard, which runs along southwest side Tomales Bay, lies between Sir Francis Drake Boulevard and Tomales Bay. The applicants privately own the project site and there are no recorded public access easements or offers to dedicate public access easements affecting any of the subject parcels. However, because a portion of the land is located on tidelands, a public trust easement extends over some of the site. Neither the applicants nor the Commission staff have conducted a study to determine whether the public may have a right to access the coast through any portion of the project site based on use. Thus, there is a potential that the public may have required a right by implied dedication to use the project site to access the coast and the sea.

No physical development is proposed as part of this permit application that could interfere with any potential public access rights that may exist on the three lots. Furthermore, the proposed lot lines together with Special Condition 1 would eliminate the potential for future development that could interfere with any public access rights that may exist on the proposed parcels. Parcels G and H, in the proposed lot configuration, would retain their respective existing development.

Thus, no additional development needs to be approved on these lots. Proposed Parcel I, essentially undeveloped except for the existing pier, would not be developed in the future due to the recordation of an open space and conservation easement over the lot as proposed by the applicant (Exhibit 9) and required by Special Condition 1. Thus, there is no potential that the proposed development would conflict with the public trust easement or any other public access rights that may exist on the project site. Therefore, the Commission finds that the proposed project is consistent with Sections 30210 and 30211 of the Coastal Act.

3.6 Alleged Violation

On October 7, 1999, without benefit of a coastal permit, the applicants undertook development consisting of a lot line adjustment for APNs 114-062-06, -07 and -08, Parcels A, B and C respectively. As a result of the purported lot line adjustment, the APNs for the reconfigured lots were changed to 114-062-16, -17, and -18, Parcels D, E, and F respectively (Exhibit 6, 1999 Purported Lot Line Adjustment). In August 2002, the applicants applied for after-the-fact authorization of the above-mentioned development.

Although development has taken place prior to submission of this permit amendment application, consideration of the application by the Commission has been based solely upon the policies of the LCP and the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit amendment does not constitute a waiver of any legal action with regard to the alleged violation, nor does it constitute an admission as to the legality of any development undertaken on the site without a coastal permit.

3.7 California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effects, which the activity may have on the environment.

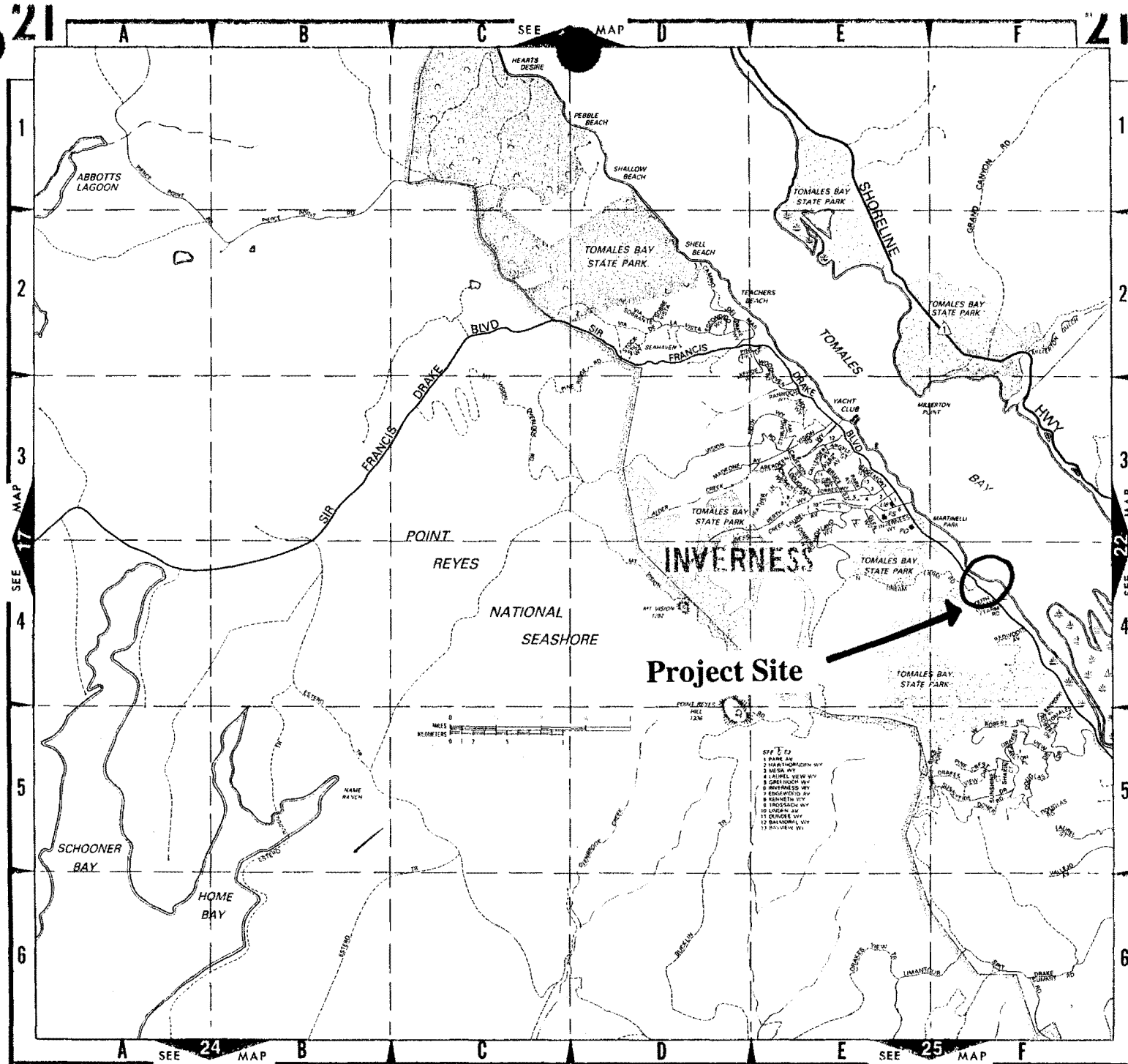
The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. The staff report addresses and responds to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. The proposed project has been conditioned to be found consistent with the policies of the Coastal Act and to minimize all adverse environmental effects. Mitigation measures have been imposed to prevent impacts to any wetlands and ESHA on site. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impacts, which the development may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with Coastal Act requirements to conform to CEQA.

EXHIBITS:

1. Regional Map
2. Vicinity Map

2-02-010 (Whitt & Tate)

3. Assessors Parcel Map
4. Site Aerial Photograph
5. Boundary Determination
6. 1999 Purported Lot Line Adjustment
7. 0.12-acre Lot Line Adjustment
8. Proposed Lot Lines
9. Proposed Open Space and Conservation Easement



MARIN CO

DETAIL

EXHIBIT NO. 2

APPLICATION NO.
2-02-010 WHITE STATE

Vicinity Map

3

2-02-010WHITT & TATE

Map

54-003

114-06



Assessor's Map Bk.114 -Pg.06
County of Marin, Calif.

NOTE—Actual size 2 1/2" x 3 1/2" shown in Elevation.

EXHIBIT NO. 4

APPLICATION NO.
2-02-010 WHITE&TATE

Site Aerial

Photograph

6-7-01 1:12,000

CCC-BQK-C 149-7

Project Site



Subject Properties

POR. RANCHO PUEBLO DE LOS REYES
POR. T. L. SURV. 219
POR. T. L. SURV. 185

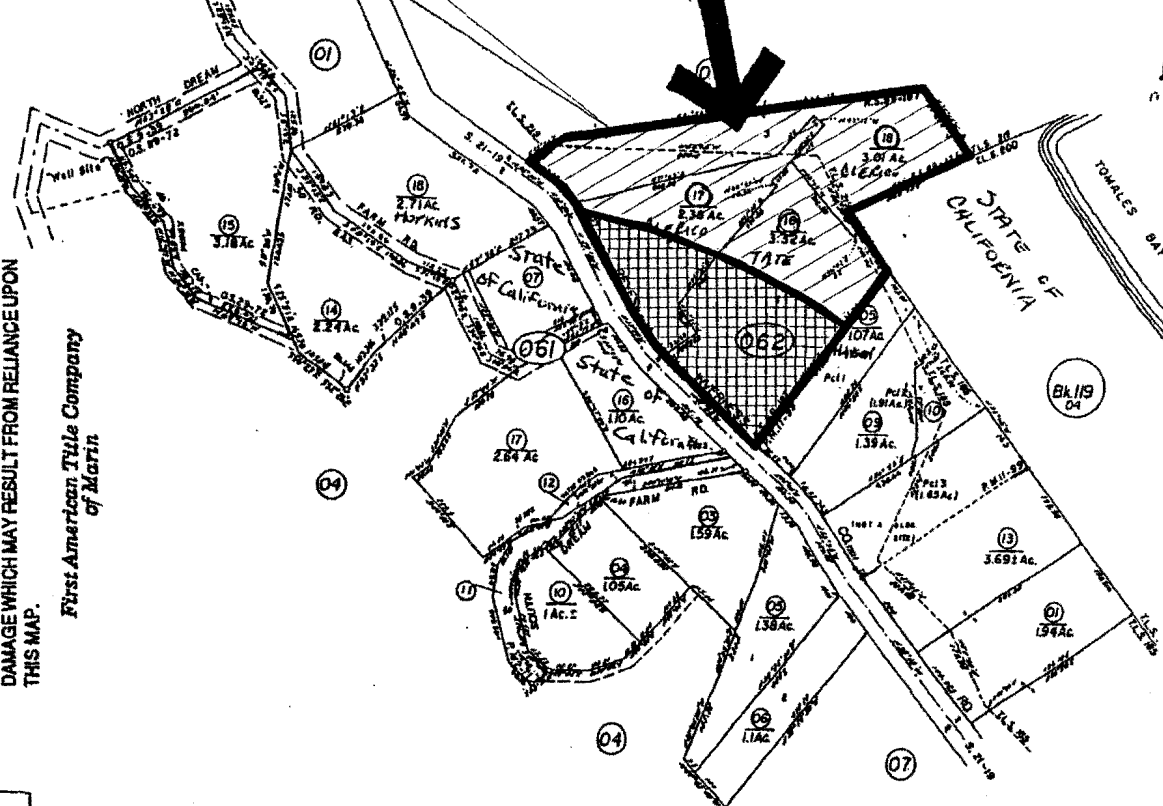
Tax Rate Area
94-034

114-06

THIS MAP OR MAY NOT BE A SURVEY OF THE
LAND DEPICTED HEREON. YOU SHOULD NOT RELY
UPON IT FOR ANY PURPOSE OTHER THAN ORIENTA-
TION TO THE GENERAL LOCATION OF THE PARCEL OR
PARCELS DEPICTED. FIRST AMERICAN EXPRESSLY
DISCLAIMS ANY LIABILITY FOR ALLEGED LOSS OR
DAMAGE WHICH MAY RESULT FROM RELIANCE UPON
THIS MAP.

First American Title Company
of Marin

COASTAL MAP	
REVISED	THIS MAP WAS PREPARED FOR
4-3-00 MS	1. EXHIBITION OF LANDS FOR
3-19-93	2. NO LITIGATION IS REQUIRED FOR
8-5-94 APT	3. THE ACCURACY OF THE DATA SHOWN
	4. THE COMPLETION OF THE MAP



Assessor's Map Bk. 114 -Pg. 06
County of Marin, Calif.

NOTE-Assessor's Black Numbers Shown in Ellipses.

EXHIBIT NO. 5
APPLICATION NO. 2-02-010 WHITE STATE
Boundary Determination

BD No. 35-2002
APNs 114-062-16, 17 & 18
Marin County



Marin County Permit Jurisdiction
Coastal Commission Appeal Jurisdiction



Coastal Commission Permit Jurisdiction



Exhibit



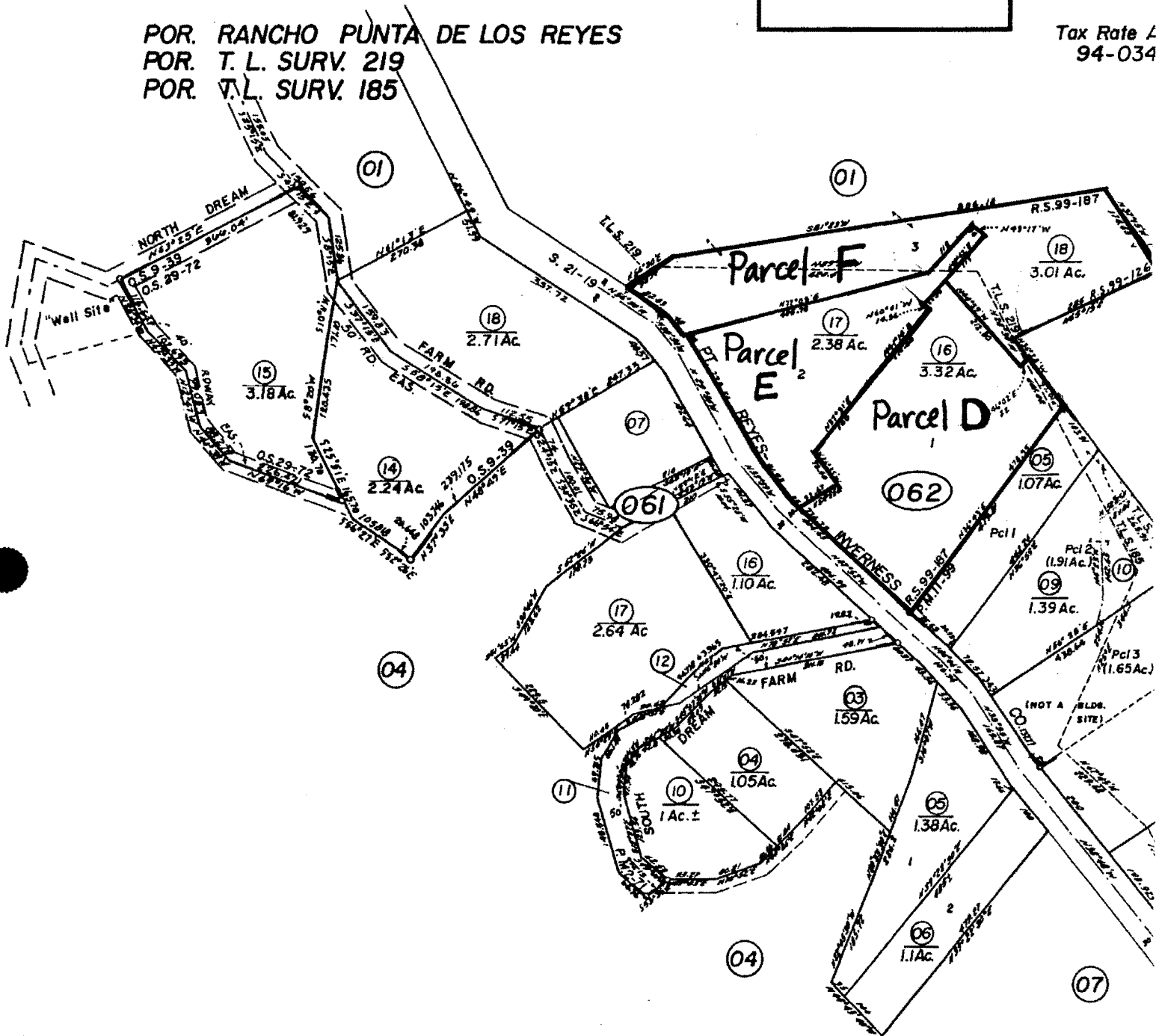
EXHIBIT NO. 6

APPLICATION NO.
2-02-010 WHITE&TATE

1999 Purported Lot
Line Adjustment

Tax Rate /
94-034

POR. RANCHO PUNTA DE LOS REYES
POR. T. L. SURV. 219
POR. T. L. SURV. 185



NOTE—Assessor's Block Numbers Shown in Ellipses.
Assessor's Parcel Numbers Shown in Circles.

Assessor
Coun

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FAX (415) 669-1624

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CALIFORNIA
COASTAL COMMISSION

September 11, 2002

Sarah Borchelt
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Faxed to 904-5400
2 pages

RE: Coastal Development Permit Application Filing Determination
for File Number 2-02-010 (Whitt) Inverness, Marin County

Dear Sarah:

I am writing as the representative of Michael Whitt, the trustee of the Clerico Trust, co-applicant for the above Coastal Development Permit. Dr. Whitt proposes to irrevocably offer to dedicate an open space and conservation easement prohibiting all development as defined in Public Resource Code, Section 30106, for the land which the trust owns, identified as Assessor Parcel No. 114-062-18 plus the .12 acre area proposed to be transferred from 114-062-17 to 114-062-18, as outlined on the attached Exhibit A.

Dr. Whitt, as co-applicant, proposes to execute and record such irrevocable offer to dedicate for open space and habitat conservation purposes prior to issuance of the Coastal Development Permit in a manner, content and format acceptable to the Executive Director.

If you need additional information or wish to discuss this letter, please contact me.

Sincerely,

Martha Howard
MARTHA HOWARD

MH:at

EXHIBIT NO.	9
APPLICATION NO.	2-02-010WHITT & T
Proposed Open Space and Conservation	
Easement (Page 1 of 2)	

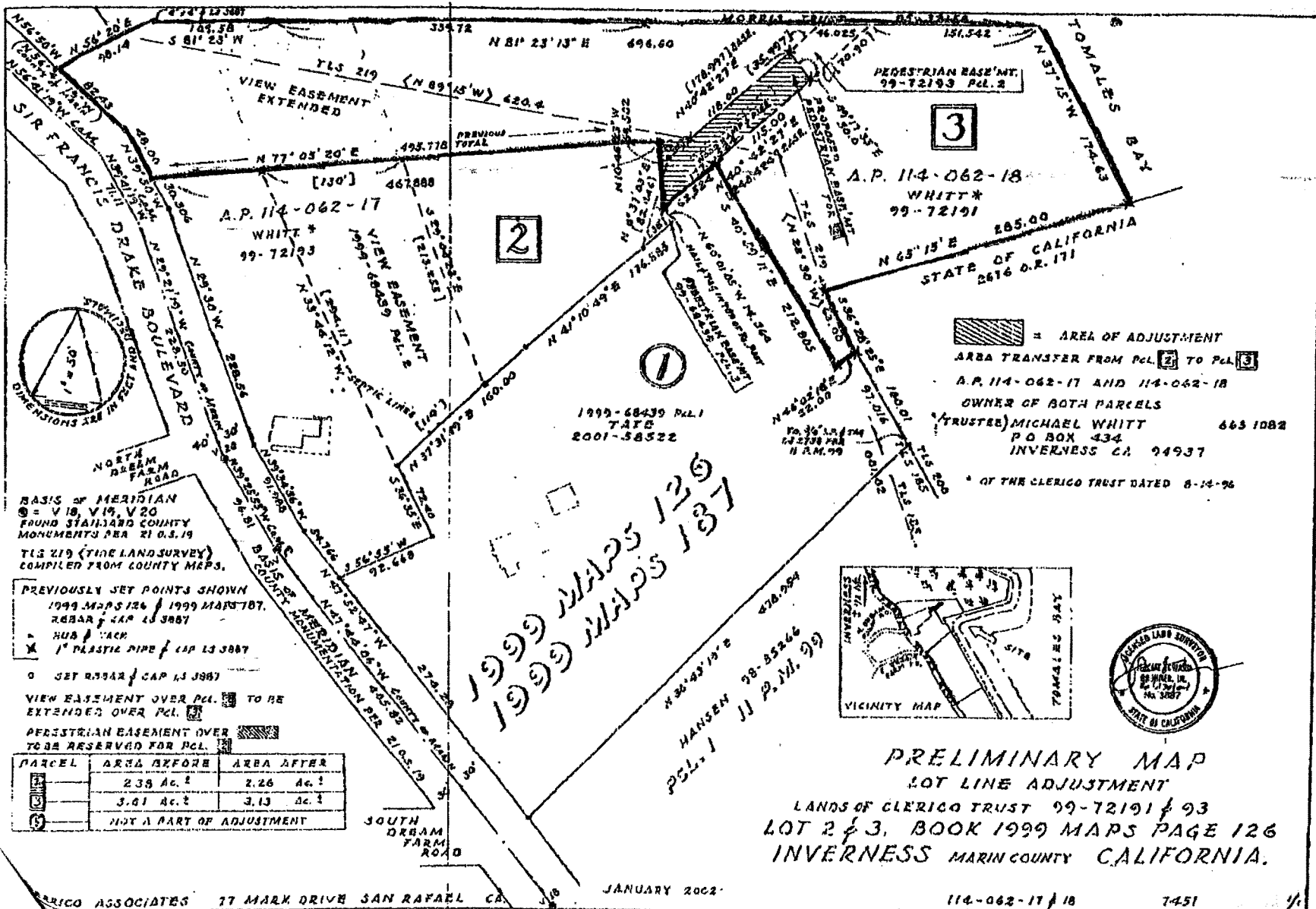


EXHIBIT A

